THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.No.64 of 2004

Dated:30.08.2007

Between:

Housing & Urban Development Corporation Ltd., A Company registered under the Companies Act with registered Office at HUDCO Bhavan India Habitat Centre Lodi Road, New Deli, Hyderabad, rep. by its Law Officer.

..Petitioner.

and

The State of A.P. rep. by Registrar, Co-operative Society, Exhibition Grounds, Nampally Station Road, Hyderabad and others.

..Respondents.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

–
–
–
–
–
–
–
–

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.No.64 of 2004

ORDER:

–

The indiscriminate borrowing of amounts by M/s. Maniraja Constructions, a Partnership Firm, 4th respondent herein, and respondents 5 & 6, even by going to the extent of forging the documents, has landed the Housing & Urban Development Corporation Ltd., the petitioner herein, M/s. Vasavi Co-operative Urban Bank Ltd., the 3rd respondent herein, and M/s. Indian Overseas Bank, the 7th respondent herein, in the litigation.

Respondents 4 to 6 borrowed a sum of Rs.330 lakhs on 15.03.1996 from the petitioner for the purpose of constructing housing complex, and from the 7th respondent, they borrowed a sum of Rs. 35 lakhs in the year 1994. In addition to these amounts, they borrowed Rs.81 lakhs from the 3rd respondent. Different items of properties were mortgaged with the three financial institutions as security for repayment of those amounts. Default occurred in repayment of loans.

The petitioner filed O.A.No.451 of 2001 before the Debts

Recovery Tribunal, Hyderabad (for short, 'the Tribunal') for recovery of a sum of Rs.3,84,88,982/-. The 7th respondent filed O.A.No.383 of 2002 before the Tribunal for recovery of Rs.58,76,840-79/- . So far as the 3rd respondent is concerned, it filed ARC No. 0219/ 2002/OSD/VCUB before the Deputy Registrar of Co-operative Societies, the 2nd respondent herein, under Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act'). The 2nd respondent passed an award, dated 22.02.2003, holding that respondents 4 to 6 are liable to pay a sum of Rs.93,72,236/- as on 11.08.2001. The award became final. Thereupon, the 3rd respondent filed E.P.No.141 of 2003 for sale of two items of mortgaged properties, namely, H.No.6-3-630/A, Khairtabad, admeasuring 859 Sq. yds, and the H.No.11-5-425, Zaffar Bagh, Loakdi-ka-Pool, Hyderabad, admeasuring 602 sq. yards.

The petitioner contends that the two items referred to above, were mortgaged to them also for repayment of loan and in that view of the matter, the award, dated 22.02.2003, must not be permitted to be executed. An objection is raised as to the very permissibility of initiation of proceedings under Section 61 of the Act, placing reliance upon the judgment of the Full Bench of this Court in **M. BABU RAO v. DEPUTY REGISTRAR OF CO-OERATIVE SOCIETIES/OFFICER ON SPECIAL DUTY, THE VASAVI CO-OPERATIVE URBAN BANK LTD.,MALAKPET, HYDERANAD**[1]**.**

Heard Sri Suryaprakasha Rao, learned counsel for the

petitioner, learned Government Pleader for Co-operation, Sri G.Vidyasagar, learned counsel for 3rd respondent, Sri P. Hema Chandra, learned counsel for respondents 4 to 6, Sri K. Suryanarayana, learned counsel for 7th respondent.

It is astonishing that respondents 4 to 6 have mobilized huge funds from different banks, by mortgaging the properties, to all the banks. The hollowness of the loaning system by financial system is exemplified in this case. That, however, it is a different aspect. The fact remains that respondents 4 to 6 have availed loans to the tune of several crores, but they have not chosen to repay the same. They left it to the financial agencies to fight among themselves, in the matter of recovery of amounts.

The petitioner does not challenge the award, dated 22.02.2003, passed by the 2nd respondent. It only seeks a direction that the award be prohibited from being executed. The only plea raised in this regard is that a Full Bench of this Court in **M. BABU RAO's** case (1 supra) held that even a Co-operative Urban Bank has to initiate proceedings before the Tribunal for recovery of amounts, and it cannot invoke the procedure prescribed under the Act. The judgment rendered by the Full Bench of this Court, however, was reversed by the Hon'ble Supreme Court, in its Judgment in **GREATER BOMBAY CO-OPERATIVE BANK LTD., v. M/s. UNITED YARN TEX. PVT. LTD.**[2]**.** Hence, there does not exist the basis for stalling the execution of the award, dated 22.02.2003, since it has already become final.

Across the Bar, it is stated that the sale of the two items

mortgaged to the 3rd respondent would fetch much more amount than what is due to it. Learned counsel for the petitioner and the 7th respondent have submitted that their officials also may be permitted to take part in the auction proceedings to ensure that fair and proper procedure is adopted throughout. On behalf of respondents 4 to 6, a request is made to the effect that they be permitted to bring prospective purchasers, who, according to them, would offer much more amount than the one that may be fetched in the auction.

Having regard to the facts and circumstances, the Writ Petition is disposed of directing that:

(a) the auction of the properties mortgaged to the 3rd respondent may be proceeded with, by issuing a notice, as required under the relevant provisions of law;

(b) It shall be open to the representatives of the petitioner and the 7th respondent, to take part and observe the proceedings of auction, and subsequent sale, and to bring any prospective purchasers;

(c) In case respondents 4 to 6 are able to bring any prospective purchaser, within two weeks from the date of conclusion of auction, who is prepared to offer and pay at least 10% over and above the amount that is fetched in the auction, shall also be taken into account. In such an event, the highest bidder shall also be given an opportunity to revise

his bid.

(d) After the sale becomes final, the amount payable to the 3rd respondent shall be deducted, and the balance shall be deposited to the credit of O.A.No.451 of 2001 filed before the Debts Recovery Tribunal, Hyderabad, within two weeks from the date of deposit of the amounts by the prospective purchasers-successful bidders.

(e) The manner in which the amount so deposited shall be dealt with, would depend on the out come of the O.A.

There shall be no order as to costs.

_____

L. NARASIMHA REDDY, J

Dated:30.08.2007

Note:
Issue CC in three days.

(Bo)
sj

---

[1] 2005(4) ALT 327 (F.B)

[2] 2007(3) SCJ 415